

APPROVED

VERMONT SUPREME COURT ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE

Minutes of Meeting November 15, 2016

The meeting was called to order at 1:45 p.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Kathy Gray, Katherine Mosenthal, David Otterman, Diane Pallmerine, and Catherine Richmond (by phone). Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of draft minutes of the meeting of September 20, 2016. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of September 20, 2016, as previously distributed.

2. Status of proposed and recommended amendments. Professor Wroth reported that

A. The Committee's proposed amendments of V.R.P.P. 4(a), 5(e), and 80.2(a) were sent out for comment on June 15, with comments due on August 15, 2016. No comments were received. The Committee considered a proposed revised draft of Rule 5(e) that would adopt V.R.C.P. 5(h) with a presently pending amendment of it. In discussion, the benefit of uniformity between the Civil and Probate divisions was noted. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend to the Supreme Court that the revised draft of the amendment to V.R.P.P. 5(e) be sent out for comment. No action was taken on the proposed amendments of V.R.P.P. 4(a) and 80.2(a).

B. The Committee considered Justice Dooley's letter of November 4, 2016, explaining that the proposed amendment of V.R.P.P. 47(d) concerning the method of recording probate proceedings, transmitted to the Supreme Court on October 4, 2016, had not been acted upon because of the Court's concern that all proceedings be recorded by trained staff. After discussion, it was agreed that the final sentence of the present rule could be deleted in light of present practice but that the chair should write a letter to Justice Dooley expressing the Committee's view that in light of limited staff in the Probate Division, and the nature of most hearings, the judge be given some discretion to operate recording equipment. Use of trained staff could be recognized as a "best practice" in the Reporter's Notes.

C. The Committee's recommended amendment of V.R.P.P. 43(e) concerning interpreters sent to the Court on October 25, 2016, would be considered by the Court with parallel recommended amendments of V.R.C.P. 43(f) and V.R.Cr.P. 28 at its November 18 administrative meeting.

D. The Committee's proposed promulgation order amending V.R.P.P. 6(a) and other Probate Rules to adopt the "day is a day" rule, sent to the Court on October 25, 2016, will be considered by the Court at its November 18 administrative meeting.

Professor Wroth noted that the order will go out without the Committee's suggested changes to Rules 52(b) and 60 (c), which could be considered after the comment period.

E. The Committee's suggested additions to pending V.R.C.P. 43.1(c) providing that all participants in telephone hearings could hear the proceedings and making statements made by telephone part of the record were considered by the Special Committee on Video Appearance on September 30, 2016, and were deemed unnecessary. The proposed Technical Standards will address those concerns. The Probate Rules Committee will be able to review the rule and Standards during the comment period.

3. Expanded provisions for motions and contested cases. Ms. Pallermine reported that Professor Wroth had advised the subcommittee that its charge had been established as to review proposed V.R.P.P. 39 concerning fact hearings and proposed amendments of V.R.C.P. 72 covering interlocutory appeals. In discussion, it was agreed that fact hearings should remain discretionary to avoid litigation costs. The subcommittee was asked to clarify the procedures for interlocutory appeals and to review other provisions of Rule 72.

4. Effect of recommended amendment of V.R.F.P. 7 and addition of V.R.F.P. 7.1 on probate jurisdiction under V.R.F.P. 6, 6.1. Judge Ertel reported that the joint subcommittee will present a proposal at the next meeting on how to protect confidentiality in closed proceedings if transfer were allowed between Family and Probate court.

5. Suggested amendment of V.R.P.P. 77(e)(2) concerning confidentiality of index of wills. After consideration of Professor Wroth's draft amendment of Rule 77(e) and issues he raised concerning its conflict with 14 V.S.A. § 2(e), it was agreed to defer consideration until the status of the Pratt bill in the next Legislature was known.

6. V.R.P.P. 45(b)—document subpoena. After consideration of Professor Wroth's draft amendment of V.R.P.P. 45(b) and the question whether to adapt V.R.C.P. 45 in the Probate rule, he agreed to prepare a draft adaption of V.R.C.P. 45 and to report on Civil Rules Committee's action on the Rule 45(b) amendments.

Date of next meeting. Professor Wroth agreed to circulate possible dates for a meeting in on a Tuesday afternoon in the last two weeks of February.

There being no further business, the meeting was adjourned at 3:55 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter